

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOE RAYMOND CASTILLO,

Plaintiff, No. CIV S-04-0737 GEB GGH P

vs.

CALIFORNIA YOUTH
AUTHORITY,

Defendants. ORDER

On December 1, 2004, the court ordered plaintiff to inform the court within ninety days whether he intended to file an amended complaint or proceed with the original complaint. Ninety days passed and plaintiff did not respond to the December 1, 2004, order. Accordingly, on April 5, 2005, the court ordered plaintiff to show cause for his failure to respond.

On April 15, 2005, plaintiff filed a response to the April 5, 2005, order. Plaintiff states that he is still seeking permission to pursue state law claims. Pending in the San Joaquin County Superior Court is a petition for relief from the claims presentation requirement under Cal. Govt. Code § 946.6. Plaintiff states that the case management conference for this petition is set for September 16, 2005.

Plaintiff states that he would prefer for the state court to determine whether the state claim can proceed before proceeding with this action. In the event this court wishes to

1 proceed at this time, plaintiff has attached a proposed amended complaint to his April 15, 2005,
2 pleading.

3 So that this action is not further delayed, the court orders service of the amended
4 complaint attached to plaintiff's April 15, 2005, pleading. Plaintiff has also requested leave to
5 proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has submitted a declaration
6 that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in
7 forma pauperis will be granted.

8 The amended complaint states a cognizable claim for relief pursuant to 42 U.S.C.
9 § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a
10 reasonable opportunity to prevail on the merits of this action.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
13 2. The Clerk is directed to remove the amended complaint attached to plaintiff's
14 April 15, 2005, pleading and file it with the court;

15 3. Service is appropriate for the following defendants: Dashiell, Lai, Pagaduan,
16 Shepard, Wesely.

17 4. The Clerk of the Court shall send plaintiff 5 USM-285 forms, one summons,
18 an instruction sheet and a copy of the amended complaint attached to plaintiff's April 15, 2005,
19 pleading to be separately filed;

20 5. Within thirty days from the date of this order, plaintiff shall complete the
21 attached Notice of Submission of Documents and submit the following documents to the court:

- 22 a. The completed Notice of Submission of Documents;
23 b. One completed summons;
24 c. One completed USM-285 form for each defendant listed in number 3
25 above; and
26 d. Six copies of the endorsed and filed amended complaint filed.

6. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

7. The April 5, 2005, order to show cause is discharged.

DATED: 5/18/05

/s/ Gregory G. Hollows

GREGORY G. HOLLOWSS
UNITED STATES MAGISTRATE JUDGE

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JOE RAYMOND CASTILLO,

Plaintiff,

No. CIV S-04-0737 GEB GGH P

vs.

CALIFORNIA YOUTH
AUTHORITY, et al.,

NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ 1 completed summons form

_____ 5 completed USM-285 forms

_____ 6 copies of the _____

Complaint/Amended Complaint

DATED:

Plaintiff